

REMARKS/ARGUMENTS

Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 are pending in this Application.

By this Amendment, claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 are currently amended. Applicant respectfully submits that support for the claim amendments can be found throughout the specification and the drawings.

Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 remain pending in the Application after entry of this Amendment. No new matter has been entered.

In the Office Action, claims 1-7 stand rejected under 35 U.S.C. § 101 as allegedly being directed to nonstatutory subject matter. Claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Applicant's background, in further view of U.S. Patent No. 6,609,112 (hereinafter "Boarman") and U.S. Patent Application Publication No. 2002/0147675 (hereinafter "Das").

Claim Rejections Under 35 U.S.C. § 101

Applicant respectfully traverses the rejections to claims 1-7 and requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 101.

Claim Rejections Under 35 U.S. C. § 103(a)

Applicant respectfully traverses the rejections to claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 and requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) based on Applicant's background, Boarman, and Das. Applicant respectfully submits that Boarman and Das, either individually or in combination, fail to disclose one or more of the claim limitations recited in each of claims 1-4, 6, 7, 11-14, 16-21, 23, and 24. These differences, along with other difference, establish that the subject matter as a whole of claims 1-4, 6, 7, 11-14, 16-21, 23, and 24 would not have been obvious at the time of invention to a person of ordinary skill in the art.

For example, amended claim 1 recites the feature of determining whether a first bid received from a first bidder at the then current asking price marks an end to a first phase of a two-phase auction and a beginning of a second phase of the two-phase auction. See, for

example, FIG. 3 of Applicant's disclosure where the current asking price decreases in a first phase similar to a Dutch auction until a triggering bid ends the first phase and enables a second phase similar to an English auction.

The Office Action acknowledges that Applicant's background fails to disclose the combination of a Dutch auction where the current asking price is periodically reduced over time until a bid at the current asking price stops the auction and an English auction where buyers compete with one another until no one is willing to bid higher than the last bid placed. Accordingly, a single two-phase auction may be held as recited in amended claim 1 in which, in a first phase, the current asking price is periodically reduced over time until a bid at the current asking price stops, not the auction as in a Dutch action, but merely the first phase of the auction, and where buyers compete in a second phase of the auction with one another until no one is willing to bid higher than the last bid placed to stop the auction. However, Boarman and Das, also fail to disclose the method of amended claim 1 where a single two-phase auction may be held as recited in claim 1 in which, in a first phase, the current asking price is periodically reduced over time until a bid at the current asking price stops merely the first phase and where buyers compete with one another in a second phase until no one is willing to bid higher than the last bid placed.

In particular, Das is directed to a double auction which is a process of buying and selling goods when potential buyers submit their bids and potential sellers simultaneously submit their ask prices to an auctioneer. (Emphasis added). Accordingly, Das discloses that the auctioneer maintains "bid and ask queues" in paragraph [0054]. The process of maintaining bids and asks in Das does not disclose a combination of Dutch and English auctions as recited in amended claim 1. Additionally, these two queues in Das are substantially different from the two-phases recited in amended claim 1. Das fails to disclose that in a continuous double auction a current asking price for an item (e.g., asks in Das) periodically decreases in a first phase as recited in amended claim 1 and, when triggered by a bid (bids in Das) at the current asking price in the first phase as recited in amended claim 1, then rises as buyers compete with one another in a second phase until no one is willing to bid higher than the last placed current asking price as recited in amended claim 1. Das merely discloses that bids or asks are continuously submitted,

and that bids or asks are pushed down to lower positions in their queues by a succession of “higher bids or lower asks.” Thus, the current asking price of an item in Das may go down when potential sellers submit lower ask prices to the auctioneer than the current asking price. The current asking price in Das may go up, not in response to the ending of a Dutch-like auction as recited in amended claim 1, but because these “pushed down” asks rise to the top of their queues because lower asks have been settled and no other lower asks have been submitted. Thus, the current asking price in Das does not decrease as recited in amended claim 1 based on an automated periodic decreasing and posting of the current asking price until information associated with a first bid received from a first bidder over the computer network at the then current asking price but due to simply lower ask prices submitted by potential sellers. Additionally, the current asking price in Das does not increase due successive bids for the item that are placed at the network-based auction location later in time and that are higher than the first bid within a predetermined time interval from at least one of the first bidder and the at least one additional bidder as recited in amended claim 1, but due to the “pushed down” asks that rise to the top of their queues and that have a higher ask price.

Accordingly, even if the Office Action understands Das to have two phases in that bids and asks are handled simultaneously, Das does not disclose the feature of determining whether a first bid at a current asking price marks an end to a first phase of a two-phase auction where the current asking price is periodically decreased until receiving the first bid at the current asking price and a beginning of a second phase of the two-phase auction as recited in amended claim 1 for accepting successive bids for the item that are placed at the network-based auction location later in time and that are higher than the first bid within a predetermined time interval from at least one of the first bidder and the at least one additional bidder.

Boarman also fails to cure the above discussed deficiencies. Boarman’s disclosure operates in the realm where a Dutch auction refers to a multi-unit auction. Yet, Boarman also fails to disclose or suggest the feature of determining whether a first bid at a current asking price marks an end to a first phase of a two-phase auction where the current asking price is periodically decreased until receiving the first bid at the current asking price and a beginning of a second phase of the two-phase auction as recited in amended claim 1 for

accepting successive bids for the item that are placed at the network-based auction location later in time and that are higher than the first bid within a predetermined time interval from at least one of the first bidder and the at least one additional bidder as recited in amended claim 1.

Accordingly, Applicants respectfully submit that Boarman and Das fails to disclose each and every claim limitation as recited in amended claim 1. Applicants further respectfully submit that none of the cited references cure the above-discussed deficiencies of Boarman and Das, and thus, amended claim 1 is allowable over the cited references.

Applicants respectfully submit that independent claims 11 and 18 are allowable for at least a similar rationale as discussed above for the allowability of claim 1, and others. Applicants respectfully submit that the dependent claims that depend directly and/or indirectly from independent claims 1, 11, and 18, are also allowable for at least a similar rationale as discussed above for the allowability of the independent claims. Applicants further respectfully submit that the dependent claims recite additional features that make the dependent claims allowable for additional reasons.

Unless otherwise specified, amendments to the claims are made for the purposes of clarity, and are not intended to alter the scope of the claims or limit any equivalents thereof.

While Applicants do not necessarily agree with the prior art rejections set forth in the Office Action, these amendments may be made to expedite issuance of the Application. Applicants reserve the right to pursue claims to subject matter similar to those pending before the present Amendment in co-pending or subsequent applications.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

/Sean F. Parmenter, Reg. No. 53,437/
Sean F. Parmenter
Reg. No. 53,437

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 925-472-5000
Fax: 415-576-0300
SFP:lls
62230205 v1